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FEDERAL TRADE COMMISSION

16 CFR Part 305

[RIN 3084-AB15]

ENERGY LABELING RULE

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes amendments to the Energy Labeling Rule to require labels for portable air conditioners, large-diameter and high-speed small diameter ceiling fans, and instantaneous electric water heaters. Additionally, it proposes eliminating certain marking requirements for plumbing products.

DATES: Written comments must be received on or before November 14, 2016.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Energy Labeling Amendments (16 CFR Part 305) (Project No. R611004)” on your comment, and file your comment online at

<https://ftcpublic.commentworks.com/ftc/plumbingnprm>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex E), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex E), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, (202) 326-2889, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Energy Labeling Rule (“Rule”) in 1979,¹ pursuant to the Energy Policy and Conservation Act of 1975 (EPCA).² The Rule requires energy labeling for major home appliances and other consumer products to help consumers compare competing models. It also contains labeling requirements for refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, furnaces, central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.

The Rule requires manufacturers to attach yellow EnergyGuide labels to many of the covered products and prohibits retailers from removing these labels or rendering them illegible. In addition, it directs sellers, including retailers, to post label information on websites and in paper catalogs from which consumers can order products. EnergyGuide labels for most covered products contain three key disclosures: estimated annual energy cost, a product’s energy consumption or energy efficiency rating as determined by DOE test procedures, and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models. For cost calculations, the Rule specifies national average costs for applicable

¹ 44 FR 66466 (Nov. 19, 1979).

² 42 U.S.C. 6294. EPCA also requires the Department of Energy (DOE) to develop test procedures that measure how much energy appliances use, and to determine the representative

energy sources (*e.g.*, electricity, natural gas, oil) as calculated by DOE. Under the Rule, the Commission periodically updates comparability range and annual energy cost information based on manufacturer data submitted pursuant to the Rule’s reporting requirements.³

II. Proposed Amendments to the Energy Labeling Rule

The Commission seeks comments on issues related to recent DOE regulatory actions or new issues raised by commenters in response to a November 2, 2015 Notice of Proposed Rulemaking (“2015 NPRM” or “NPRM”) (80 FR 67351), including portable air conditioner labeling, large-diameter and high-speed small-diameter ceiling fan labels, electric instantaneous water heater labeling, and plumbing disclosures changes.⁴

A. Portable Air Conditioners

Background: In the 2015 NPRM, the Commission sought comment on labeling for portable air conditioners (portable ACs) in response to a DOE proposal designating portable air conditioners as covered products under EPCA.⁵ Given the similarity of portable air conditioners to room air conditioners (room ACs), the Commission proposed requiring the same or similar labeling for the two products. In addition, the Commission proposed requiring such labels after

average cost a consumer pays for different types of energy.

³ 16 CFR 305.10.

⁴ The comments received in response to the 2015 NPRM are here:

<https://www.ftc.gov/policy/public-comments/initiative-601>. The comments included: Association of Home Appliance Manufacturers (AHAM) (#00016); CSA Group (#00007); California Investor Owned Utilities (California IOUs) (#00019); Earthjustice (“Joint Commenters”) (#00018); International Association of Plumbing and Mechanical Officials (IAPMO) (#00022); NSF International (#00005); and Plumbing Manufacturers International (PMI) (#00006).

⁵ See 78 FR 40403 (July 5, 2013); 42 U.S.C. 6292. Portable air conditioners are movable units, unlike room air conditioners, which are permanently installed on the wall or in a window.

DOE completes its portable air conditioner test procedure rulemaking.

In support of this position, the Commission stated that labels for this product category are likely to assist consumers in their purchasing decisions. It is also stated such labels would be economically and technologically feasible.⁶ Portable air conditioners are common in the marketplace, use energy equivalent to already-covered room air conditioners, and vary in their energy use. Specifically, DOE has reported that the aggregate energy use of portable ACs has been increasing as these units have become popular in recent years.⁷ DOE also estimated that these products have a large efficiency rating range (approximately 8.2–14.3 Energy Efficiency Ratio (EER)). In addition, DOE estimated average per-household annual electricity consumption for these products at approximately 650 kWh/yr (750 kWh/yr for EER 8.2, and 400 kWh/yr for EER 14.3). Thus, the Commission stated in the 2015 NPRM that energy labeling for these products is likely to assist consumers with their purchasing decisions by allowing them to compare competing models' energy costs. In addition, because these products closely resemble room air conditioners, which are currently labeled under the Rule, the burdens and benefits of labeling these products should not differ significantly from those already applicable to room air conditioners.

Therefore, the Commission proposed requiring labels for portable air conditioners identical to the current room air conditioner label in content and format. The proposed

⁶ See 42 U.S.C. 6294(a)(3).

⁷ See 78 FR at 40404-05; *Technical Support Document: Energy Efficiency; Program for Consumer Products and Commercial and Industrial Equipment: Portable Air Conditioners*. U.S. Department of Energy–Office of Energy Efficiency and Renewable Energy (Feb. 18, 2015), <http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0033-0007>.

amendments included the DOE’s proposed definition of “portable air conditioner” in section 305.3.⁸ These amendments would include separate ranges for portable air conditioners in the Rule’s appendices, which the Commission would publish after data becomes available. The Commission did not propose combining the ranges with room air conditioners, stating that it was not clear whether consumers routinely compare portable air conditioners to room air conditioners. In addition, consistent with requirements applicable to room air conditioners, the Commission proposed establishing reporting requirements identical to DOE’s for these products. The Commission also explained that it would not make a final determination on labeling until DOE issued a final test procedure and defined “portable air conditioner.”⁹ The NPRM stated that the Commission would provide manufacturers adequate time to test their products and report energy data before they must begin complying with any labeling requirements.¹⁰

Comments: Commenters generally supported requiring EnergyGuide labels for portable air conditioners. For instance, the Joint Commenters agreed that requiring EnergyGuide labels for portable air conditioners will likely assist consumers in making purchasing decisions and be economically and technologically feasible. As discussed below, the commenters also addressed the comparative information for these labels and the timing of the potential requirements.

Although commenters generally supported labeling for portable ACs, they differed about

⁸ To effect new labeling requirements, the proposed amendments insert the term “portable air conditioner” next to “room air conditioner” into appropriate sections of 305.2 (definitions), 305.3 (description of covered products), 305.7 (determinations of capacity), 305.8 (submission of data), 305.11 (labeling for appliances), and 305.20 (catalog requirements).

⁹ DOE published a proposed test procedure on February 25, 2015 (80 FR 10212).

¹⁰ Under EPCA, any energy representations on the label must reflect the DOE test results. 42 U.S.C. 6293(c).

the comparability information on the label. AHAM agreed with the Commission's initial proposal not to combine ranges for portable and room air conditioners. The Joint Commenters disagreed and specifically recommended a second range bar comparing room and portable air conditioners of similar capacity. They explained that consumer questions posted on shopping websites suggest that many consumers directly compare the two product types and use portable units in a manner similar to room air conditioners. In addition, some retailers market portable air conditioners as energy-efficient alternatives to room air conditioners.

Commenters also addressed the timing of DOE's test procedure and the FTC's labeling requirement. The California IOUs agreed that FTC should wait until DOE finalizes the test procedure for portable air conditioners before requiring an EnergyGuide label. They explained that the DOE procedure is likely to include new metrics to address portable air conditioners' performance comparability, peak-demand performance, and actual usage. AHAM strongly urged the Commission to align the label implementation date to coincide with DOE's compliance date for energy conservation standards. Given the considerable burdens associated with designing products to meet such standards, AHAM noted that EPCA sets a five-year lead-in period for manufacturers to comply.¹¹ During that period, companies must ensure that new and existing products meet the applicable standard. According to AHAM, the pre-development, development, and tooling phases for new product launches can take years and require extensive company resources, time, and coordination. AHAM cautioned that any requirement to distribute labels prior to the DOE standards compliance date will require companies to divert resources from

¹¹ See 42 U.S.C. 6295(l).

developing new, more efficient products.¹² In addition, in AHAM's view, if FTC requires labels before this date, manufacturers would have to test and label all the low-efficiency models they plan to discontinue because such models do not meet the DOE standards.¹³

Discussion: Consistent with the comments, the Commission continues to conclude that labeling for portable air conditioners will aid consumers in their purchasing decisions. On June 1, 2016 (81 FR 35242), DOE issued a final test procedure for these products, thus establishing a means to test and label them.

However, the content and timing of DOE's new test procedure raises several new issues. First, in its test procedure notice, DOE explained that its test procedures do not generate comparable results for portable and room air conditioners. In response to stakeholder concerns about this inconsistency, DOE plans to consider amending the room air conditioner procedure to address this issue. However, it is not clear when this change will occur. In the meantime, the inconsistent results might lead consumers to draw inaccurate conclusions regarding comparative yearly energy cost estimates. However, such problems will arise only if consumers consider

¹² AHAM also explained that it will take significant time for manufactures to determine the list of active models and, out of those models, identify those that qualify as "basic models" under DOE and FTC regulations.

¹³ Finally, AHAM noted that the testing and labeling involved would be more burdensome than the estimates included in the Paperwork Reduction Act analysis of the 2015 NPRM. Specifically, AHAM estimated: 32 hours per model for testing (8 hours x 4 units, as well as up to 4 hours for preparing the data); 40 hours per model for reporting; and 40 hours per model for label preparation. It is unclear whether AHAM's reporting burden estimate refers to annual certification reports or to new model reports. Annual reports include all models under current production (including models previously reported to the database). It is also unclear whether an estimate of 40 hours for label drafting is per model rather than, perhaps more justifiably, per product type or per manufacturer. As noted in the Paperwork Reduction Act discussion below, the Commission seeks clarification regarding these estimates.

portable and room air conditioners to be reasonable substitutes for one another. The Commission raised this issue in the NPRM. In declining to propose combined portable AC and room AC comparability ranges, the Commission stated that “it is not clear whether consumers routinely compare portable air conditioners to room air conditioners when shopping.”¹⁴ As discussed above, commenters split in their opinions on this issue. AHAM, without elaboration, agreed with the Commission’s proposal to keep the ranges separate. In contrast, the Joint Commenters, citing several examples, asserted that consumers do, in fact, make such comparisons. Likewise, DOE stated in its recent test procedure Notice that “comparative ratings between room ACs and portable ACs [are] desirable,” implying that consumers do compare these products.¹⁵ Given the possibility that the two labels would lead consumers to make inaccurate comparisons between portable AC and room AC models, the Commission proposes waiting to issue final portable air conditioner labels until the two test procedures are harmonized. In addition, once such harmonized data is available, the Commission proposes combining range categories for portable ACs and room ACs given commenter evidence suggesting consumers do, in fact, compare the two product types.¹⁶ The Commission seeks comment on all aspects of this proposal.¹⁷

¹⁴ 80 FR at 67357

¹⁵ 81 FR at 35251. DOE also noted “the many similarities between room ACs and portable ACs in design, cost, functionality, consumer utility, and applications.” *See* 81 FR at 35250.

¹⁶ The Commission proposes to group the ranges by size only and not by product configuration (*e.g.*, reverse cycle or louvered sides).

¹⁷ Consistent with the Commission’s recent decision on room air conditioners, the portable AC label would appear on the product box, not the unit itself. In addition, the portable AC label would disclose the Combined Energy Efficiency Ratio (CEER). 80 FR 67285, 67292 (Nov. 2, 2015).

Second, the Commission seeks comment on the timing and content of reporting requirements for portable air conditioners. The NPRM indicated that the Commission would simply follow DOE's reporting requirements for these products. However, at this time, DOE has not established such provisions. Given the current absence of DOE reporting requirements, commenters should address the types of information that FTC should collect pending DOE reporting rules.

Finally, now that DOE has issued a final test procedure and is proceeding to set a compliance date for efficiency standards, the Commission seeks input on the overall timing of label requirements. The 2015 NPRM explained the Commission would establish labeling requirements sometime after the test procedure's publication. However, industry commenters, citing significant burdens associated with testing and labeling, urged the Commission to synchronize any new labeling requirements with the DOE standards compliance date. In light of these concerns, the Commission seeks comments on whether the final label requirement should coincide with the future DOE standards compliance date or the Commission should require the new labels sooner.

B. Large-Diameter and High-Speed Small Diameter Ceiling Fan Labels

The Commission recently issued updated ceiling fan labels, which the Commission will require on all fan boxes within two years. In publishing the new label, the Commission excluded large-diameter fans (*i.e.*, 84 inches or greater in diameter) and high-speed small-diameter (HSSD) fans because the new DOE test procedure prescribes significantly different operating

assumptions (hours per day) for these models.¹⁸ The DOE test procedure dictates a 6.4-hour per day operating assumption for standard fans but a 12-hour per day figure for large-diameter and HSSD models.¹⁹ As a result, the DOE test yields substantially different yearly cost estimates for fans with the same power consumption. Absent adequate disclosures alerting consumers to the different operating assumptions on these models, the resulting inconsistencies could be confusing or even misleading. Accordingly, the Commission seeks comment on the need for, and content of, large-diameter and HSSD fan labels. Commenters should address whether EnergyGuide labels or other required labels for these two fan types are necessary to help consumers make purchasing decisions, whether consumers commonly compare these fan types to more conventional fans, and, if so, what information is necessary on the labels or other disclosures to prevent confusion.

C. Electric Instantaneous Water Heaters

The Commission also proposes to require EnergyGuide labels for electric instantaneous water heaters. Although the current Rule includes such products in the “water heater” definition (section 305.3), DOE’s test procedure has not included provisions for measuring the annual energy consumption of electric instantaneous models. Therefore, the Commission has not required labels for such products. However, DOE has updated its test procedure to include such

¹⁸ 81 FR 48620 (July 25, 2016). In its proposed test procedure Notice, DOE described a HSSD fan as a model that has a blade thickness of less than 3.2 mm at the edge or a maximum tip speed greater than applicable limits set out by DOE and does not otherwise qualify as “a very small-diameter ceiling fan, highly-decorative ceiling fan or belt-driven ceiling fan.” DOE also explained that “HSSD ceiling fans generally operate at much higher speeds (in terms of RPM) than standard or hugger ceiling fans, and are installed in commercial applications.” 81 FR 1688, 1700, and 1703 (Jan. 13, 2016).

a measurement.²⁰ Accordingly, the Commission proposes to amend the Rule to require labeling, and publish comparability ranges for use on these products in a final Rule. The labels will follow the same format and content as other covered water heaters. The final Rule will require manufacturers to begin using labels on their products within 180-days of the final Rule.

D. Plumbing ASME Reference Update

Background: The Commission also proposed to update the marking and labeling requirements in Section 305.16 to reference the current ASME standards for showerheads and faucets (“A112.18.1”), as well as water closets and urinals (“A112.19.2”). The proposed change would update these references by removing the letter “M,” which appeared in older, obsolete versions of the standards’ titles (*e.g.*, “A112.18.1M”). Under the proposal, the Rule would require the markings to read “A112.18.1” and “A112.19.2” respectively, making them consistent with the current designations referenced in existing DOE water efficiency standards (10 CFR Part 430). EPCA directs the Commission to amend the labeling requirements to be consistent with any revisions to these ASME standards, unless the Commission finds such amendments would be inconsistent with EPCA’s purposes and labeling requirements.²¹ In the proposal, the Commission indicated it had found no such inconsistency. Given the routine nature of this change and the minimal impact it would have on consumers, the Commission proposed providing manufacturers with two years to revise the marking on their affected plumbing products to include the updated reference.

¹⁹ 81 FR at 48645.

²⁰ 79 FR 40542 (July 11, 2014).

²¹ 42 U.S.C. 6294(a)(2)(E).

Comments: In response, plumbing manufacturers and standards organizations, including CSA, IAPMO, PMI, and NSF, recommended the Commission remove this marking requirement for showerheads and faucets (A112.18.1), as well as water closets and urinals (A112.19.2).²² The commenters offered several different reasons. First, NSF and PMI argued that consumers are unaware of the marking's relevance. They explained that consumers do not associate the ASME markings with product performance. PMI and CSA also noted that the Energy Labeling Rule does not require such markings for most other covered products, such as appliances, subject to similar standards.²³ Second, the commenters (*e.g.*, IAPMO, NSF) asserted that existing requirements, as well any revisions to them, impose unnecessary and unreasonable burdens without any corresponding benefit. NSF explained that the marking requirements are particularly burdensome for products that have limited surface space. Third, according to the commenters, the Rule's marking requirements are no longer necessary because the ASME standards themselves no longer require such markings and all applicable plumbing codes now impose similar disclosures and require manufacturers to third-party certify their products to the current applicable standard.²⁴

²² The commenters recommended that, consistent with EPCA's requirements (42 U.S.C. 6294(a)(2)(E)(i) and 42 U.S.C. 6294(a)(2)(F)(i)), the Commission retain the flow rate and water use disclosures for these products to continue to help consumers with their purchasing decisions. The commenters also explained that the "M" designation, a now obsolete reference to metric that was in the standard's title when Congress first required marking, has since been removed from the titles of both standards.

²³ CSA noted that Canada does not require a similar federal marking requirement, and that this has not harmed Canadian residents.

²⁴ At the time the Commission promulgated the marking regulations, no such third-party requirements existed. According to the commenters, third-party certification also requires a small certification mark on the product as well as periodic product and manufacturing facilities

Discussion: The Commission agrees with commenters that the required marking appears to have outlived its usefulness, and that its removal likely will have no negative impact on consumers or other market participants. In addition, as noted in the comments, the current revisions of both ASME standards no longer require these markings. Because the NPRM did not seek comments on this substantial change, the Commission has provided amendatory language in this Notice and seeks comment on this issue.

III. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 14, 2016. Write “Energy Labeling Amendments (16 CFR Part 305) (Project No. R611004)” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <https://www.ftc.gov/policy/public-comments>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include

auditing to ensure ongoing compliance. Additionally, certifiers maintain public listings on their

any sensitive health information, such as medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is . . . privileged or confidential,” as discussed in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/plumbingnprm>, by following the instruction on the web-based form. If this Notice appears at <http://www.regulations.gov>, you also may file a comment through that website.

If you prefer to file your comment on paper, mail your comment to the following address:
Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex E), Washington, DC 20580, or deliver your comment to the following address:
Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th

websites, which allows verification of product compliance.

Floor, Suite 5610 (Annex E), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this NPRM and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 14, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Because written comments appear adequate to present the views of all interested parties, the Commission has not scheduled an oral hearing regarding these proposed amendments. Interested parties may request an opportunity to present views orally. If such a request is made, the Commission will publish a document in the Federal Register stating the time and place for such oral presentation(s) and describing the procedures that will be followed. Interested parties who wish to present oral views must submit a hearing request, on or before October 4, 2016, in the form of a written comment that describes the issues on which the party wishes to speak. If there is no oral hearing, the Commission will base its decision on the written rulemaking record.

IV. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA). OMB has approved the Rule's existing

information collection requirements through May 31, 2017 (OMB Control No. 3084-0069). The proposed amendments make changes in the Rule's labeling requirements that will increase the PRA burden as detailed below.²⁵ Accordingly, FTC staff will submit this notice of proposed rulemaking and associated Supporting Statement to OMB for review under the PRA.²⁶

Burden estimates below are based on Census data, DOE figures and estimates, general knowledge of manufacturing practices, and trade association advice and figures. The FTC estimates that there are about 450 basic models (*i.e.*, units with essentially identical physical and electrical characteristics) affected by these amendments, including 100 electric instantaneous water heater models, 130 large-diameter and 70 high-speed small diameter fan models, and 150 portable air conditioner models. In addition, FTC staff estimates that there are 6 instantaneous water heater manufacturers, 20 ceiling fan manufacturers (of large-diameter and high-speed small diameter models), and 45 portable air conditioner manufacturers. The FTC estimates that there are approximately 2,700,000 ceiling fan units (of the type relevant here), 1,000,000 portable air conditioner units, and 100,000 electric instantaneous water heaters shipped each year in the U.S.

Reporting: FTC staff estimates that the average reporting burden for manufacturers will be approximately two minutes to enter label data per basic model. Subject to further public

²⁵ The proposed changes to plumbing should impose no additional burden beyond existing estimates because such changes either impose no or *de minimis* additional burdens, or manufacturers should be able to incorporate the proposed changes into their normally scheduled package or label revisions without incurring additional burdens beyond those already accounted for.

²⁶ The PRA analysis for this rulemaking focuses strictly on the information collection requirements created by and/or otherwise affected by the amendments. Unaffected information collection provisions have previously been accounted for in past FTC analyses under the Rule and are covered by the current PRA clearance from OMB.

comment, including AHAM clarification regarding its reporting burden estimate, the FTC estimates that annual reporting burden is approximately 15 hours [(2 minutes × 450 models)].

Labeling: The FTC additionally seeks further public comment on its burden estimate for labeling, including AHAM clarification of its proffered estimate for portable AC labeling. Provisionally, and tied to prior FTC burden estimates for labeling focused on the time to affix product labels, FTC staff estimates burden to be six seconds per unit; accordingly, 6,334 hours (six seconds x 3,800,000 total annual product shipments).

Testing: Manufacturers will require approximately 3 hours to test each new basic ceiling fan model, 24 hours for each water heater, and 36 hours for portable air conditioners.²⁷ The FTC estimates that, on average, 50% of the total basic models are tested each year. Accordingly, the estimated annual testing burden for the three affected products categories is 4,200 hours [ceiling fans – 300 hours (3 hours x 200 x .5); water heaters – 1,200 hours (24 hours x 100 x .5); and PACs – 2,700 hours (36 hours x 150 x .5)].

Recordkeeping: The Rule also requires ceiling fan manufacturers to keep records of test data generated in performing the tests to derive information included on labels. The FTC estimates that it will take manufacturers one minute per record (*i.e.*, per model) to store the data. Accordingly, the estimated annual recordkeeping burden would be approximately 8 hours, rounded up (1 minute x 450 basic models).

²⁷ For portable ACs, the estimate assumes 3 units tested at 8 hours apiece consistent with DOE requirements, with an additional 4 hours for data analysis. See DOE's Compliance Certification Management System at <https://www.regulations.doe.gov/ccms>.

Catalog Disclosures: Based upon FTC staff research concerning the number of manufacturers and online retailers, staff estimates that there are an additional 300 catalog sellers who are subject to the Rule’s catalog disclosure requirements. Staff estimates further that these sellers each require approximately 3 hours per year to incorporate the data into their catalogs. This estimate is based on the assumptions that entry of the required information takes on average one minute per covered product and that the average online catalog contains approximately 200 covered products relevant here. Given that there is great variety among sellers in the volume of products that they offer online, it is very difficult to estimate such numbers with precision. In addition, this analysis assumes that information for all 200 covered products is entered into the catalog each year. This is a conservative assumption because the number of incremental additions to the catalog from year to year is likely to be much lower after initial start-up efforts have been completed. Thus, the total annual disclosure burden for all catalog sellers of ceiling fans covered by the Rule is 900 hours (300 sellers \times 3 hours).

Thus, estimated annual burden attributable to the proposed amendments is 11,457 hours (15 hours for reporting + 6,334 hours for affixing labels + 4,200 hours for testing + 8 hours for recordkeeping + 900 disclosure hours for catalog sellers).

Annual Labor Costs

Staff derived labor costs by applying assumed hourly wages²⁸ to the burden hours described above. In calculating labor costs, the FTC assumes that electrical engineers perform

²⁸ The mean hourly wages that follow are drawn from “Occupational Employment and Wages—May 2015,” Bureau of Labor Statistics (“BLS”), U.S. Department of Labor, Table 1, released March 30, 2016 (“National employment and wage data from the Occupational Employment

test procedures, electronic equipment installers affix labels, and data entry workers enter label data, catalog disclosures, and perform recordkeeping. Average hourly wages for these labor categories, based on BLS data, are as follows: (1) electrical engineers (\$46.80); (2) electronic equipment installers (\$24.22); and (3) data entry workers (\$15.79).

Based on the above estimates and assumptions, the total annual labor cost for the five different categories of burden under the Rule, applied to the affected product categories, is derived as follows:

Reporting (Data Entry): 15 hours (450 basic models x 2 minutes) x \$15.79/hour (data entry workers) = \$237

Labeling (Affixing Labels): 6,334 hours x \$24.22 (electronic equipment installers) = \$153,409

Testing: 4,200 hours x \$46.80/hour (electrical engineers) = \$196,560

Recordkeeping: 8 hours x \$15.79/hour (data entry workers) = \$126

Catalog Disclosures: 1,200 hours x \$15.79/hour (data entry workers) = \$18,948

Thus, the total annual labor cost is approximately \$369,280.

Estimated annual non-labor cost burden: Manufacturers are not likely to require any significant capital costs to comply with the proposed amendments. Industry members, however, will incur the cost of printing labels for each covered unit. The estimated label cost, based on \$.03 per label, is \$114,000 (3,800,000 x \$.03).

Statistics survey by occupation, May 2015”), available at

Total Estimate: Accordingly, the estimated total hour burden of the proposed amendments is 11,457 with associated labor costs of \$369,280 and annualized capital or other non-labor costs totaling \$114,000.

Pursuant to section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the proposed information collection is necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information. All comments should be filed as prescribed in the ADDRESSES section above, and must be received on November 14, 2016.

Comments on the proposed recordkeeping, disclosure, and reporting requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW, Washington, D.C. 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395-5806.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule and a

Final Regulatory Flexibility Analysis (FRFA), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603 through 605.

The Commission does not anticipate that the proposed rule will have a significant economic impact on a substantial number of small entities. The Commission recognizes that some of the affected manufacturers may qualify as small businesses under the relevant thresholds. However, the Commission does not expect that the economic impact of the proposed amendments will be significant because these amendments involved routine labeling requirements commonly implemented by the affected entities and the burden of the requirements is not large as discussed in the Paperwork Reduction Act section of this Notice.

FTC staff estimates that the amendments will apply to 200 online and paper catalog sellers of covered products and about 71 product manufacturers. Staff expects that approximately 150 qualify as small businesses, all of which are online or paper catalog sellers.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed rule, the number of these companies that are small entities, and the average annual burden for each entity. Although the Commission certifies under the RFA that the rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is

appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

The Commission is proposing expanded product coverage and additional improvements to the Rule to help consumers in their purchasing decisions for high efficiency products.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the rule is to improve the effectiveness of the current labeling program. The legal basis for the Rule is the Energy Policy and Conservation Act (42 U.S.C. 6292 *et seq.*).

C. Small Entities to Which the Proposed Rule Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, appliance manufacturers qualify as small businesses if they have fewer than 1,000 employees (for other household appliances the figure is 500 employees). Catalog sellers qualify as small businesses if their sales are less than \$8.0 million annually. FTC staff estimates that there are approximately 150 catalog sellers subject to the proposed rule's requirements that qualify as small businesses.²⁹ The FTC seeks comment and information regarding the estimated number or nature of small business entities for which the proposed rule would have a significant economic impact.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The changes under consideration would slightly increase reporting or recordkeeping requirements associated with the Commission's labeling rules as discussed above. The

²⁹ See 75 FR at 41712 (July 19, 2010).

amendments likely will increase compliance burdens by extending the labeling requirements to portable air conditioners, instantaneous electric water heaters, and certain ceiling fan types. The Commission assumes that the label design change will be implemented by data entry workers and underlying testing done by electrical engineers.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed rule. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Rule

The Commission seeks comment and information on the need, if any, for alternative compliance methods that, consistent with the statutory requirements, would reduce the economic impact of the rule on small entities. For example, the Commission is currently unaware of the need to adopt any special provisions for small entities. However, if such issues are identified, the Commission could consider alternative approaches such as extending the effective date of these amendments for catalog sellers to allow them additional time to comply beyond the labeling deadline set for manufacturers. Nonetheless, if the comments filed in response to this notice identify small entities that are affected by the proposed rule, as well as alternative methods of compliance that would reduce the economic impact of the rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

VI. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

VII. Proposed Rule

List of Subjects in 16 CFR part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons discussed above, the Commission proposes to amend part 305 of title 16, Code of Federal Regulations, as follows:

PART 305--ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT ("ENERGY LABELING RULE")

1. The authority citation for Part 305 continues to read as follows:

AUTHORITY: 42 U.S.C. 6294.

2. In § 305.2, redesignate paragraph (l)(23) as (l)(24), add new paragraph (l)(23), and revise paragraph (p) to read as follows:

§ 305.2 Definitions.

* * * * *

(l) * * *

(23) Portable air conditioners,

* * * * *

(p) Energy efficiency rating means the following product-specific energy usage descriptors: annual fuel utilization efficiency (AFUE) for furnaces; energy efficiency ratio (EER) for room air conditioners and portable air conditioners; seasonal energy efficiency ratio (SEER) for the cooling function of central air conditioners and heat pumps; heating seasonal performance factor (HSPF) for the heating function of heat pumps; airflow efficiency for ceiling fans; and, thermal efficiency (TE) for pool heaters, as these descriptors are determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293). These product-specific energy usage descriptors shall be used in satisfying all the requirements of this part.

* * * * *

3. In § 305.3, add paragraph (z) to read as follows:

§ 305.3 Description of covered products.

* * * * *

(z) *Portable air conditioner* means a portable encased assembly, other than a “packaged terminal air conditioner,” “room air conditioner,” or “dehumidifier,” that delivers cooled, conditioned air to an enclosed space, and is powered by single-phase electric current. It includes a source of refrigeration and may include additional means for air circulation and heating.

4. Amend § 305.7 by revising paragraph (f) to read as follows:

§ 305.7 Determinations of capacity.

* * * * *

(f) *Room air conditioners and portable air conditioners.* The capacity shall be the cooling capacity in Btu’s per hour, as determined according to appendix F to 10 CFR part 430, subpart B,

but rounded to the nearest value ending in hundreds that will satisfy the relationship that the value of EER used in representations equals the rounded value of capacity divided by the value of input power in watts. If a value ending in hundreds will not satisfy this relationship, the capacity may be rounded to the nearest value ending in 50 that will.

* * * * *

5. In § 305.8, revise paragraph (b)(1) to read as follows:

§ 305.8 Submission of data.

* * * * *

(b)(1) All data required by § 305.8(a) except serial numbers shall be submitted to the Commission annually, on or before the following dates:

Product category	Deadline for data submission
Refrigerators	Aug. 1
Refrigerators-freezers	Aug. 1
Freezers	Aug. 1
Central air conditioners	July 1
Heat pumps	July 1
Dishwashers	June 1
Water heaters	May 1
Room and portable air conditioners	July 1
Furnaces	May 1
Pool heaters	May 1
Clothes washers	Oct. 1
Fluorescent lamp ballasts	Mar. 1
Showerheads	Mar. 1

Faucets	Mar. 1
Water closets	Mar. 1
Ceiling fans	Mar. 1
Urinals	Mar. 1
Metal halide lamp fixtures	Sept. 1
General service fluorescent lamps	Mar. 1
Medium base compact fluorescent lamps	Mar. 1
General service incandescent lamps	Mar. 1
Televisions	June 1

* * * * *

6. Amend § 305.11 by revising the section heading and paragraphs (f)(5) and (8) to read as follows:

§ 305.11 Labeling for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, portable air conditioners, and pool heaters.

* * * * *

(f) * * *

(5) Unless otherwise indicated in this paragraph, estimated annual operating costs for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, room air conditioners, portable air conditioners, and water heaters are as determined in accordance with §§ 305.5 and 305.10. Thermal efficiencies for pool heaters are as determined in accordance with § 305.5. Labels for clothes washers and dishwashers must disclose estimated annual operating cost for both electricity and natural gas as illustrated in the sample labels in appendix L to this part.

Labels for dual-mode refrigerator-freezers that can operate as either a refrigerator or a freezer must reflect the estimated energy cost of the model's most energy-intensive configuration.

* * * * *

(8) Labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, and water heaters must contain the model's estimated annual energy consumption as determined in accordance with § 305.5, and as indicated on the sample labels in appendix L to this part. Labels for room air conditioners, portable air conditioners, and pool heaters must contain the model's energy efficiency rating or thermal efficiency, as applicable, as determined in accordance with § 305.5 and as indicated on the sample labels in appendix L to this part.

* * * * *

7. Amend § 305.13 by revising paragraph (a) to read as follows:

§ 305.13 Labeling for ceiling fans.

(a) Ceiling fans. – (1) Content. Any covered product that is a ceiling fan shall be labeled clearly and conspicuously on the package's principal display panel with the following information on the label consistent with the sample label in Appendix L to this part:

(i) Headlines, including the title "EnergyGuide," and text as illustrated in the sample labels in Appendix L to this part;

(ii) The product's estimated yearly energy cost based on [12 hours per day for fans greater than 84 inches in diameter and for high velocity small-diameter fans, and 6.4 hours for all other covered models] hours use per day and 12 cents per kWh;

- (iii) The product's airflow expressed in cubic feet per minute and determined pursuant to § 305.5 of this part;
- (iv) The product's energy use expressed in watts and determined pursuant to § 305.5 of this part as indicated in the sample label in appendix L of this part;
- (v) The statement "Based on 12 cents per kWh and [12 hours per day for fans greater than 84 inches in diameter and for high velocity small-diameter fans, and 6.4 hours for all other covered models] use per day";
- (vi) The statement "Your cost depends on rates and use";
- (vii) The statement "All estimates based on typical use, excluding lights";
- (viii) The statement "The higher the airflow, the more air the fan will move;"
- (ix) The statement "Airflow Efficiency: ____ Cubic Feet Per Minute Per Watt";
- (x) The address ftc.gov/energy;
- (xi) For fans less than 19 inches in diameter, the label shall display a cost range of \$10 to \$50 along with the statement underneath the range "Cost Range of Similar Models (18" or smaller)";
- (xii) For fans from 19 or more inches and less than 84 inches in diameter, the label shall display a cost range of \$3 to \$34 along with the statement underneath the range "Cost Range of Similar Models (19"- 83)".
- (xiii) For fans more than 83 inches in diameter, the label shall display a cost range of \$49 to \$734 along with the statement underneath the range "Cost Range of Similar Models (greater than 83)".
- (xiv) For high velocity, small diameter fans, the label shall display a cost range of \$8 to \$85

along with the statement underneath the range “Cost Range of Similar Models.”

(xv) Placement of the labeled product on the scale proportionate to the lowest and highest estimated annual energy costs as illustrated in the Sample Labels in appendix L. When the estimated annual energy cost of a given model falls outside the limits of the current range for that product, the manufacturer shall place the product at the end of the range closest to the model's energy cost.

(xvi) The ENERGY STAR logo as illustrated on the ceiling fan label illustration in Appendix L for qualified products, if desired by the manufacturer. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those products that are covered by the Memorandum of Understanding;

(2) Label size, color, and text font. The label shall be four inches wide and three inches high. The label colors shall be black text on a process yellow or other neutral contrasting background. The text font shall be Arial or another equivalent font. The label's text size, format, content, and the order of the required disclosures shall be consistent with the ceiling fan label illustration of appendix L of this part.

(3) Placement. The ceiling fan label shall be printed on or affixed to the principal display panel of the product's packaging.

(4) Additional information. No marks or information other than that specified in this part shall appear on this label, except a model name, number, or similar identifying information.

(5) Labeling for “multi-mount” fans. For “multi-mount” fan models that can be installed either extended from the ceiling or flush with the ceiling, the label content must reflect the lowest efficiency (cubic feet per watt) configuration. Manufacturers may provide a second label depicting the efficiency at the other configuration.

* * * * *

8. Amend §305.16 by revising paragraphs (a)(3), (a)(4), (b)(3), and (b)(4) to read as follows:

§ 305.16 Labeling and marking for plumbing products.

(a) * * *

(3) The package for each showerhead and faucet shall disclose the manufacturer’s name and the model number.

(4) The package or any label attached to the package for each showerhead or faucet shall contain at least the following: the flow rate expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 325 of the Act, 42 U.S.C. 6295(j). Each flow rate disclosure shall also be given in liters per minute (L/min) or liters per cycle (L/cycle).

(b) * * *

(3) The package, and any labeling attached to the package, for each water closet and urinal shall disclose the flow rate, expressed in gallons per flush (gpf), and the water use value shall be the actual water use or the maximum water use specified by the standards established in subsection (k) of section 325 of the Act, 42 U.S.C. 6295(k). Each flow rate disclosure shall also be given in liters per flush (Lpf).

(4) With respect to any gravity tank-type white 2-piece toilet offered for sale or sold before January 1, 1997, which has a water use greater than 1.6 gallons per flush (gpf), any printed matter distributed or displayed in connection with such product (including packaging and point-of-sale material, catalog material, and print advertising) shall include, in a conspicuous manner, the words “For Commercial Use Only.”

* * * * *

9. In §305.20, remove the term “room air conditioners” wherever it appears and add, in its place, the term “room and portable air conditioners.”

10. Add Appendix D6 to read as follows:

APPENDIX D5 TO PART 305 -WATER HEATERS - INSTANTANEOUS-ELECTRIC

Range Information

CAPACITY	Range of Estimated Annual Energy Costs (Dollars/Year)	
Capacity (maximum flow rate); gallons per minute (gpm)	LOW	HIGH
“Very Small” - less than 1.6	*	*
“Low” - 1.7 to 2.7	*	*
“Medium” – 2.8 to 3.9	*	*
“High” - over 4.0	*	*

11. Revise Appendix E to read as follows:

APPENDIX E TO PART 305 - ROOM AND PORTABLE AIR CONDITIONERS
Range Information

Manufacturer's rated cooling capacity in Btu's/hr	Range of Estimated Annual Energy Costs (Dollars/Year)	
	LOW	HIGH
Less than 6,000 Btu	*	*
6,000 to 7,999 Btu	*	*
8,000 to 13,999 Btu	*	*
14,000 to 19,999 Btu	*	*
20,000 and more Btu	*	*

* No data submitted.

By direction of the Commission.

Donald S. Clark,
Secretary.

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